

Guidance on Reporting and Considering Past Performance and References in MCA Entity Program Procurements

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MCA Entities are encouraged to seek relevant information about potential contractors and consultants from a broad array of sources, including the CPPRS, other references given by contractors/consultants in their bids/proposals and other references from any other source available to the MCA Entity at its discretion. These should be a key part of the review and evaluation process.

Shortly after bid/proposal opening, the Procurement Agent or its representative should contact the references or clients listed in the bid or proposal, using a questionnaire form similar to the samples provided in Attachments 2 and 3 to this guidance paper. Responses received from these reference checks should be provided to the TRP or TEP as appropriate for timely consideration during the contractor/consultant selection process.

1. Purpose

The Program Procurement Guidelines (“PPG”) issued by the Millennium Challenge Corporation (“MCC”) to govern procurement of contracts funded under Millennium Challenge Compacts and certain other MCC funding authorities require that these contracts (“MCC-funded contracts”) be awarded only to qualified and capable consultants and contractors that have the capability and willingness to perform the contracts in accordance with the terms and conditions of the applicable contracts and on a cost-effective and timely basis. Past performance and reference information is critical to protecting the party to an MCC-funded contract (“MCA Entity”) from selecting a firm whose historical performance indicates an elevated risk of poor performance or delays.

MCC’s Standard Bidding Documents (“SBDs”) for works and consultant services require that consultants or contractors submit references and documentation of experience as part of the proposal or bid submission process. These SBDs also require that the MCA Entity reserve the right to contact references and other sources to verify past performance for all consultants and contractors. As an extension of this, MCC has designed the Contractor Past Performance Reporting System to facilitate the sharing of performance-related information across MCA Entities to aid in the selection of the best providers of works and consultant services. This document is a revision and update to the “Guidance on Reporting and Considering Past Performance by Contractors in MCA Entity Program Procurements” that was issued in December 2008. It includes changes to submission thresholds and procedures, as well as more detailed guidance for the use of past performance reports and references in the qualification and evaluation process.

2. Scope and Applicability

Using the Contractor Past Performance Reporting System (“CPPRS”), MCC maintains a record of performance by contractors and consultants on MCC-funded contracts with MCA Entities. The CPPRS does not maintain a record of consultant and contractor performance on other contracts. For information on performance on other contracts, the MCA Entity must seek references. Guidance for checking

references is set out below.

The requirement to generate and submit a Contractor Past Performance Report (“CPPR”) to MCC applies to contracts for consultant services valued at USD 200,000 or more and to contracts for works valued at USD 5 million or more. CPPRs must be submitted within two months of completion or termination of a contract. Additionally, for multi-year contracts, CPPRs should be submitted annually unless MCC has granted an exception to this filing requirement when there is evidence that filing of the reports would interfere with contract management strategies. MCA Entities are also encouraged to submit a CPPR whenever there has been a significant change in contract performance. CPPRs are not required for contracts below the thresholds stated above, but they may be used in a contract situation if an MCA Entity finds completing a CPPR would be helpful in managing the procurement contract.

3. Creating a Record

Contractor Past Performance Reports must follow the format set out in Attachment 1 to this guidance paper and should be submitted in English. The key aspects of each CPPR are as follows:

1. All reports must include an honest and forthright assessment of a contractor/consultant’s performance that draws primarily on the facts of the implementation of the contract. This assessment is initiated by the relevant project director, and reviewed by the procurement director.
2. Once the MCA Entity has completed its review, the MCA Procurement Director should send the file to the MCC point of contact so that MCC may provide its assessment of the contractor/consultant’s performance based on MCC’s oversight of the relevant project (in the “MCC Review” box). This will be a relatively short narrative completed by the MCC project director.
3. Once the report is received back from MCC (or if no response is received from MCC within five business days), the chief executive of the MCA Entity will review and approve the report.
4. All reports must then be sent to the contractor/consultant for review and comment, and the contractor/consultant must be allowed fifteen (15) calendar days to respond. Any comments provided by the contractor form part of the Report. If no response is received, the MCA Entity may finalize the report once the fifteen (15) calendar day period has elapsed.
5. Reports that are finalized by the MCA Entity should be emailed (in .PDF format) to mcccprs@mcc.gov and to the MCC Procurement Director assigned with oversight responsibility for the Compact. The reports will be reviewed by MCC for completeness and appropriate content before they are entered into the CPPRS database.
6. MCC will track and notify MCA Entities that are not in compliance with the submission of CPPRs on a quarterly basis. Failure to file these reports as required would constitute a violation of the Compact conditions entitling MCC to exercise its remedies under the terms of the Compact.

4. Accessing Records

MCC requires the potential contractors and consultants to disclose all contracts with MCC and MCA

Entities to which they (including any of their associates or joint venture members) have been a party, whether as a lead contractor, consultant, affiliate, associate, subsidiary, subcontractor, sub-consultant or in any other role, within the past five years. CPPRs may be accessed during the evaluation of proposals or bids. CPPRs should be requested as soon as the proposals or bids are opened in order to give enough time for consideration.

To request a CPPR, the MCA Entity Procurement Director (or his/her representative) should email mcccpprs@mcc.gov and the assigned MCC Procurement Director with the name of the firm and any key personnel. Once the MCA Procurement Director receives, any CPPR(s) it shall be shared with the technical experts reviewing the bids (Technical Review Panel) or evaluating the proposals (Technical Evaluation Panel).

Note that the CPPRS may not report on all of the contracts identified in a participant's bid or proposal, such as contracts below the CPPRS thresholds or where the participant was a subcontractor or sub-consultant. In such cases, the MCA Entity is encouraged to seek references following the procedures described below.

5. How to Use Past Performance Information

Works

Past performance information for works procurements is considered at the qualification stage along with other qualification criteria. The essence of the determination at this stage is to assess any negative past performance as part of the risk assessment. If the TRP finds that this negative past performance presents a substantial risk to timely and effective performance of the contract, it may determine to disqualify the bidder and reject the bid, as stated in the Instructions to Bidders set out in the bidding documents.

Some indications of high risk that may lead to rejection include: (1) termination for cause of an MCA contract; and (2) failure to substantially and timely complete an MCA contract.

Before a bidder is disqualified, the bidder must be notified and allowed three (3) business days to respond to this negative determination. To make this policy clear to bidders, the following language (or alternative language approved by MCC) is to be included in the Instructions to Bidders in the SBDs for large works, [small works,] design build [and in the Instructions to Applicants in the SBD for pre-qualification of works]:

ITB [36.1] Past Performance and Reference Check

“In accordance with the MCC Program Procurement Guidelines, the Bidder's performance on earlier contracts will be considered a factor in the Employer's qualification of the Bidder. The Employer reserves the right to check the performance references provided by the Bidder or to use any other source at the Employer's discretion. If the Bidder (including any of its associates or joint venture/association members) is or has been a party to an MCC-funded contract (either with MCC directly or with any Millennium

Challenge Account Entity, anywhere in the world), whether as a lead contractor, affiliate, associate, subsidiary, subcontractor, or in any other role, the Bidder must identify the contract in its list of references submitted with its Bid using Bidding Form REF1: References of MCC Funded Contracts. Failure to include any such contracts may be used to form a negative determination by the Employer on the Bidder's record of performance in prior contracts. However, the failure to list any contracts because the Bidder (including any of its associates or joint venture/association members) has not been a party to any such contract will not be grounds for a negative determination by the Employer on the Bidder's record of performance in prior contracts. That is, prior performance in connection with an MCC-funded contract is not required. The Employer will check the references, including the Bidder's past performance reports filed in MCC's Contractor Past Performance Reporting System ("CPPRS"). A negative determination by the Employer on the Bidder's record of performance in prior contracts may be a reason for disqualification of the Bidder at the discretion of the Employer. However, before rejecting the Bid, the Employer shall give the Bidder one opportunity to respond to the negative determination."

Consulting Services

Past Performance information is used in proposal evaluation at the technical evaluation phase. The CPPRS report(s), along with other reference information, should be distributed to the TEP members during the proposal evaluation and considered in the evaluation and scoring of the **"Organizational Capability and Experience of the Consultant."**

CPPRS reports may also provide information about the performance of key personnel. If the same personnel worked on other MCA contracts and an assessment of their performance is included in the reports, this information may be considered in the evaluation of "Key Professional Personnel." To make this policy clear to consultants, the following language (or alternative language approved by MCC) is to be included in the Instructions to Consultants in the SBD for Consulting Services:

ITC [25.1] Past Performance and Reference Check

"In accordance with the MCC PPG, the Consultant's performance on earlier contracts will be considered a factor in the MCA Entity's qualification of the Consultant's evaluation. The MCA Entity reserves the right to check the performance references provided by the Consultant or to use any other source at the MCA Entity's discretion. If the Consultant (including any of its Associates or joint venture/association members) is or has been party to an MCC-funded contract (either with MCC directly or with any MCA Entity, anywhere in the world), whether as lead Consultant, affiliate, Associate, subsidiary, Sub-Consultant, or in any other role, the Consultant must identify the contract in its list of references submitted with its Proposal using Technical Form TECH-5B: References of MCC-Funded Contracts. Failure to include any such contracts may be used to form a negative determination by the MCA Entity on the Consultant's record of performance in prior contracts. However, the failure to list any contracts because the Consultant (including any of its Associates or joint venture/association members) has not been a party to any such contract will not be grounds for a negative determination by the MCA Entity on the Consultant's record of performance in prior contracts. That is, prior performance in connection with an MCC-funded contract is not required. The MCA Entity will check the references, including the Consultant's past performance reports filed in MCC's Contractor Past Performance Reporting System

(“CPPRS”). A negative determination by the MCA Entity on the Consultant’s record of performance in prior contracts may be a reason for disqualification of the Consultant, or lowered evaluation scores, at the discretion of the MCA Entity. However, before rejecting the Proposal, the MCA Entity shall give the Consultant one opportunity to respond to the negative determination.”

6. Reference Sources

Contractor/Consultant-Supplied References

Contractors and consultants should be requested to submit references as part of the proposal submission process. If a contractor/consultant identifies contracts with an MCA Entity within the past 5 years, but a CPPR is not available, the MCA Entity procurement team should contact the relevant MCA Entity (assuming it is still active) to request a CPPR be completed or a reference if there is insufficient time to complete a CPPR (see Attachments 1, 2 and 3).

MCC-Provided References

From time to time, MCC staff may be identified as a reference in a bid or proposal submission. However, MCC staff may only provide references for contracts for which the MCC staff member served as the Contracting Officer’s Representative (“COR”) or Project Monitor (“PM”) for MCC headquarters awarded contracts. MCC staff members may not provide references for MCA Entity contracts. Also, **it is not permitted to share** past performance information originating from US Government databases, such as the Department of Defense Contractor Performance Assessment Reporting System with MCA Entities or their Procurement Agents.

7. Using References in Bid and Proposal Evaluations

It is recognized that obtaining references from any source in time to support the deliberations of a technical panel may be difficult. The MCA Entity procurement team should make best efforts to obtain references. In general, if references are not received for a particular contractor/consultant, the panel should not penalize the contractor/consultant; however, the panel may take into consideration the lack of references if the reference sources provided by the contractor/consultant, as required by the bidding documents, fail to reply. It is the firm’s responsibility to ensure that it has listed references that are willing and able to respond to the Procurement Agent. If no references are received, this could be considered a weakness during the technical evaluation. The following guidance is provided to assist the panels in the use of reference information during the technical review or technical evaluation process.

Works

The bidding documents for large works, small works, design-build and pre-qualification of works require each bidder to furnish documentary evidence that it meets the experience requirements. The process for qualifying bidders and applicants for pre-qualification is scored on a pass/fail basis. If a reference provides

evidence that the firm failed in performance or was terminated on a particular contract, this may be a reason to disqualify the bidder/applicant for failing to satisfy the experience requirements or because such a bidder/applicant presents a high risk of poor performance based upon its historical performance. In the case where the information received indicates a marginal performance, the TRP may decide to qualify the bidder/applicant but highlight areas that need to be addressed during negotiations should the bidder/applicant be recommended for contract award. In order to disqualify a contractor and reject its bid, the MCA Entity shall follow the process laid out in the bidding document.

Consulting Services

In the evaluation of proposals, past experience in similar types of services is generally an important evaluation criterion and the score given to this criterion can be the deciding factor in the award decision. Consequently, it is significant to consider information about the quality of the consultant's performance in these past assignments. Before assigning weight for past experience, the panel should consider if the information from the CPPRs and references indicates that the consultant performed well or poorly and score the experience criterion accordingly. In the case where the information received indicates a marginal performance, the panel should highlight areas that need to be addressed during negotiations should the consultant be recommended for contract award.

Individual Consultants and Key Personnel

For individual consultant procurements, reference information is used to assess the individual's knowledge and past experience related to the services to be provided. The panel should determine if the information affects the determination of whether the experiences have been successful and score the experience criteria accordingly. In the case where the information received indicates a marginal performance, the panel may decide to qualify the consultant or accept the key personnel but highlight areas that need to be addressed during negotiation should the consultant be recommended for contract award.

8. Protection and Disclosure of Contractor Past Performance Reports

Except as may be specifically otherwise directed or allowed by MCC in writing, no person or entity granted access to CPPRs or any other summary or other information from MCC's CPPRs may disclose any such materials or information to any other person or entity other than a person or entity authorized to receive such materials or information in accordance with the MCC Program Procurement Guidelines and must take all reasonable precautions to ensure such materials and information are protected from unauthorized disclosure.